IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1436 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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PATEL ALPESHKUMAR MADHAVLAL - Applicant(s)
Versus
PATEL BHIKHABHAI AMBALAL & 1 - Respondent(s)

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Appearance :
MR SA BAQUI for Applicant(s) : 1,
None for Respondent(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 02/08/2007

ORAL JUDGMENT

1. By way of this petition under Article 227 of the Constitution of India, the petitioners – original accused has prayed to quash and set aside the order

passed by the learned trial Court below Exh. 125 in Criminal Case No. 760 of 2002 rejecting the said application by which the petitioner – original accused has sought permission to examine himself under Section 315 of the Criminal Procedure Code and the said order is confirmed by the learned Sessions Court, Gandhinagar by order dated 20.07.2007 passed in Criminal Revision Application No. 54 of 2007.

2. A criminal complaint is filed against the petitioner – original accused under Section 138 of the Negotiable Instruments Act being Criminal Case No. 760 of 2002. After that, witnesses came to be examined i.e. Prosecution side as well as defence side and even after the statement of the petitioner – original accused was recorded under Section 313 of the Criminal Procedure Code long back; and after the arguments on the prosecution side was over, belatedly, the petitioner – original accused submitted application below Exh. 125 and requested the learned trial Court to examine himself to rebut.

Few facts are necessary for determination of the present application. A complaint came to be filed

against the petitioner in the year 2002. Plea was recorded on 31.06.2003 and the complainant himself was examined on 15.12.2003. Cross-examination of the complainant was not completed on 15.12.2003. On 12.05.2004 an application was submitted by the accused which was dismissed by the learned Judge. Cross-examination of the complainant was over and thereafter, remaining witnesses from the complainant's side were examined. Pursis in respect of completing the evidence was submitted by the complainant on 28.04.2004. However, statement of the accused was recorded on 18.08.2004. Thereafter, application below Exh. 42 was submitted by the accused requesting to permit for Handwriting Expert. The said application came to be dismissed by the learned trial Court on 08.09.2004, which was challenged before the Sessions Court, Gandhingar by way of Revision Application and the said Revision Application was dismissed by the learned Sessions Court. It appears that the accused preferred Special Criminal Application No. 1412 of 2005 before this Court against the order passed by the District and Sessions Court, rejecting the said application. It

appears that this Court vide order dated 28.06.2006 set aside the order passed by the learned JMFC, Mansa below Exh. 42 and the order of the Revisional Court. It was directed to the learned Magistrate to decide the trial by properly appreciating the evidence. That thereafter, an application below Exh. 50 was submitted by the accused on 06.12.2004 with a list of defence witness and requested the learned trial Court to permit to examine witness Mr.Chandrakant Ambalal. Some order came to be passed by the learned trial Court below Exh. 50 and Criminal Misc. Application No. 1412 of 2005 was preferred before this Court. The said application came to be dismissed on 28.06.2006. That on 12.07.2006 vide Exh. 94 an application was submitted by the accused to permit to examine the defence witnesses and issue necessary summons to the witnesses. The learned trial Court passed an order to permit Mr.Madhabhai Gandabhai Patel, father of the accused as a defence witness and summons was issued, so far as the remaining witnesses are concerned, the said application was dismissed. That thereafter, Criminal Revision Application No. 102 of 2006 was preferred by the accused – petitioner herein before

the District and Sessions Court and the said Revision Application came to be allowed on 21.07.2006 permitting to examine the witnesses as prayed by the accused. The original complaint preferred Criminal Revision Application No. 531 of 2006 before this Court and this Court vide order dated 14.03.2007 quashed and set aside the order passed by the Revisional Court permitting the accused to examine the defence witnesses and the order passed by the trial Court was restored. This Court also directed the learned J.M.F.C., Mansa to give priority to hearing of this case and decide the same preferably on or before 31.05.2007. Being aggrieved and dissatisfied with order passed by this Court in Criminal Revision Application No. 531 of 2006, the petitioner – original accused approached Hon'ble Supreme Court by way of Special Leave to Appeal (Cri.) No. 2365 of 2007 and the Hon'ble Superme Court by its judgment and order dated 07.05.2007 dismissed the said Special Leave to Appeal (Cri.). That thereafter, when the trial was to proceed further and even as per the direction issued by this Court which was to be completed on or before 31.05.2007, after

arguments on the prosecution side was over, the petitioner submitted application below Exh.125 which came to be dismissed by the trial Court by holding that an attempt is made on the part of the petitioner – original accused to delay the proceedings and even at the time when statement was recorded under Section 313 of the Criminal Procedure Code it was specifically mentioned by him that he does not want to examine himself. The learned trial Court has also observed that even thereafter, as and when the applications were given by the petitioner – original accused for examining witnesses on the defence side, at that time the petitioner did not make any request to examine himself. Therefore, considering all these, the learned trial Court dismissed the said application. Said order is also confirmed by the Revisional Court by making somewhat similar observations. Being aggrieved and dissatisfied with the same, the petitioner has preferred the present application under Article 227 of the Constitution of India.

3. Mr.Baqui, learned Advocate appearing on behalf of the petitioner has submitted that

considering the subsequent judgment of the Hon'ble Supreme Court and Section 138 of the Negotiable Instruments Act, having realized the mistake in not examining himself as defence witness, that permission is not rebutted, the original accused has submitted the application to examine himself which is his valuable right and therefore, the learned trial Court as well as the Revisional Court committed an error in rejecting the said application submitted by the applicant. It is submitted by him that no prejudice will be caused to the complainant side, if the petitioner is examined now and requested to allow the present application.

4. On the other hand Mr. M.R.Mengdey, learned Additional Public Prosecutor has submitted that it is rightly held by the Courts' below that there is an attempt on the part of the petitioner to delay the trial. He has also further submitted that as such this Court has also directed the learned trial Court to decide and dispose of the trial preferably on or before 31.05.2007 and only because of delay technique adopted by the original accused and initiation of various proceedings, the compliant is not proceeded

further and is not concluded by the learned trial Court. It is submitted by him that cogent reasons are given by both the Courts' below in rejecting the application and therefore, this is not a fit case to exercise powers under Article 227 of the Constitution of India and requested to dismiss the present application.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. It is required to be noted that the complaint has been filed in the year 2002 for the offence punishable under Section 138 of the Negotiable Instruments Act. The object of the provisions of Negotiable Instruments Act is that proper and smooth functioning of all business transactions, particularly, of cheques as negotiable instruments, would primarily depends upon the integrity and honesty of the parties. It was noted that the cheques were issued as a device inter-alia for defrauding the creditors and stalling the payments. Dishonor of cheque by the Bank causes incalculable loss, injury and inconvenience to the

payee and the entire credibility of the business transactions within and outside the country suffers a serious set back. The remedy available in a Civil Court is a long drawn process and unscrupulous drawer takes various pleas to defeat the genuine claims of the payee. Considering the aforesaid object of Negotiable Instrument Act and considering the fact that when the statement of the petitioner was recorded under Section 313 of the Criminal Procedure Code as far as way back in 2004, even at that time also the petitioner did not request to examine himself. Thereafter, also twice applications were given for examining defence witness. At that time also the petitioner never requested that he may be permitted to be examined. Twice the matter came up to this Court and once before the Hon'ble Supreme Court. At no point of time the petitioner has requested that he wants to be examined. Only after the defence witness were examined and the arguments on the part of the prosecution side are over, at that time the petitioner has submitted the present application.

7. Considering above, when the learned trial

Court rejected the application by observing that there is an attempt on the part of the original accused to delay the trial and when the said order is confirmed, it cannot be said that there is any illegality committed by any of the Courts' below which calls for interference of this Court in exercise of powers under Article 227 of the Constitution of India. This Court is in complete agreement with the reasoning given by the learned trial Court as well as the Revisional Court. This Court is also of the firm opinion that there is another attempt on the part of the petitioner – original accused to delay the trial. It is also required to be noted that even this Court has directed the learned trial Court to decide and dispose of the trial preferably on or before 31.05.2007 and only because of attempt made on the part of the petitioner to delay the trial, the trial Court is not in a position to complete the trial. As stated above, arguments on the prosecution side are already concluded and only arguments on the part of the defence is to be made.

8. Considering over all facts and circumstance

of the case, this is not a fit case to exercise extraordinary powers under Article 227 of the Constitution of India more particularly, when the Courts' below have not committed any error. In view of the above, there is no substance in the present application, requires to be dismissed and accordingly it is dismissed.

[M.R.Shah, J.]

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